

The Wisconsin Partnership
for Housing Development, Inc.



121 South Pinckney Street
Madison, Wisconsin 53703

Phone: 608-258-5560
Fax: 608-258-5565

Statement of William C. Perkins
Executive Director
The Wisconsin Partnership for Housing Development, Inc.
Legislative Council Special Committee on Tax Exemptions
For Residential Property (Columbus Park)

September 28, 2004

Good afternoon. My name is Bill Perkins, and I am the Executive Director of the Wisconsin Partnership for Housing Development, Inc.

The Wisconsin Partnership was created at the initiative of the Governor in 1985 as a statewide intermediary connecting nonprofit developers and the public sector with the private sector. We have carried out our mission by: (1) providing training and technical assistance to expand the capacity of local nonprofit developers so they would have more credibility with financing sources; (2) convincing public funding sources they could use their money more effectively in tandem with private lenders and investors, and that the nonprofit development sector could play a larger role in carrying out public sector objectives; (3) working with the private sector to create financing programs to meet business objectives as well as objectives of the local and state governments and the nonprofit developers; (4) developing housing; and (5) advocating for more public and philanthropic resources devoted to affordable housing and neighborhood revitalization.

The reason we are all sitting here today is a state Supreme Court ruling on a case involving the City of Kenosha. I would like to state for the record that Mayor John Antaramian of Kenosha is an old and good friend of both me personally and the Wisconsin Partnership. I worked closely with Mayor Antaramian on affordable housing issues while he served in the Wisconsin Legislature. He was the principal sponsor of a bill to create a state housing trust fund, and of an amendment to exempt low-income housing from the internal improvements restrictions of the Wis-

consin Constitution. I don't believe for one minute that John Antaramian set out to remove the property tax exemption from all rental housing owned by nonprofit corporations, and I think that deserves to be said.

The Special Committee has an extremely important job to do, as I'm sure you all understand. The issue of property tax exemption for rental housing owned by nonprofit corporations – or, in the language of the Statutes, “benevolent associations” – is of critical importance to providing housing affordable to lower-income residents and keeping it affordable over the long term.

Property tax exemption as a means of ensuring affordability is especially important in Wisconsin because of the internal improvements clause of the state Constitution. Article VIII, Sec. 10 of the Constitution prohibits the state from contracting debt or “being a party in” works of internal improvement. Exceptions to the internal improvements prohibition listed in the Constitution include public highways, airports, veterans' housing, port facilities, and railroads. Attorney General's opinions have permitted state funds or state debt to be used for the Milwaukee convention center, replacement housing as part of airport projects, administration buildings and student housing for Voc Tech schools, a small business investment company fund, leasing state office building space to private users, dredging waterways to prevent flooding, and state bonding for private pollution abatement projects.

However, the internal improvements clause has been explicitly interpreted by the Wisconsin Supreme Court to prohibit the use of state funds or state debt to build or rehabilitate housing for lower-income residents. The Supreme Court's ruling was written so tightly that most people believe there are no options for financing improvements to housing except amending the Constitution. The Court even said that an “emergency” or the need to use the State's “police power” – usually defined as protecting public “health, safety, morals and general welfare” – don't justify interpreting the internal improvements clause to permit building or rehabilitating housing. Even removing toxic, hazardous lead paint from older homes, which has been mandated by the federal government as a condition of using federal housing subsidy funds, cannot be accomplished using state funds.

The Supreme Court's interpretation of the internal improvements clause means that Wisconsin, compared most other states, has a dramatic disadvantage in improving the quality of housing for lower-income people and for making housing more affordable. It also means that tools available to local governments, such as property tax exemption, are critically important to meeting the need for affordable housing. The state's Smart Growth law requires every local government that controls land use to provide a plan to “provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit's existing housing

stock.” There is increasing attention from both local communities and employers to the importance of housing affordable to low and moderate-income workers as part of an effective economic development strategy. Although Wisconsin businesses create many jobs with higher salaries, modestly-paid workers are the backbone of many growing businesses. Although our society places a high value on home ownership opportunities, affordable rental housing is the most realistic option for many workers.

Nonprofit housing corporations play a vital role in providing affordable housing in local communities. They provide housing for families with children, lower-income single people, senior citizens, people with disabilities and mental illnesses, victims of domestic abuse and many others. They work to revitalize central city neighborhoods, to develop mixed-income housing in growth areas, in smaller towns and rural areas.

Not all rental housing created through the efforts of nonprofit corporations is exempt from property taxes. One of the principal financing tools used by nonprofit corporations to create housing affordable to lower-income residents are federal Low Income Housing Tax Credits. Under IRS regulations, the entity that owns such housing must be a for-profit corporation because the tax credits provide a financial benefit to private individuals and corporate investors. Such housing is not eligible for exemption from property taxes in Wisconsin, even though IRS regulations require that a specified percentage of the tax credits be made available only to projects in which a nonprofit corporation plays a direct role.

Some nonprofit corporations have created Limited Liability Companies, or LLCs, to develop and own rental housing because LLCs offer certain advantages in terms of exposure to liability. Under Wisconsin law, LLCs may not be tax-exempt entities. Rental housing owned by LLCs, even if all of the members of the LLC are nonprofit corporations, is not eligible for exemption from property taxes.

Nevertheless, property tax exemption is a vitally important tool for nonprofit corporations that build and rehabilitate housing, especially housing for very low income residents and for people who need supportive services as well as decent, affordable housing. There is only a limited amount of federal funds for housing, and the competition for them is severe. There have been cutbacks in some federal housing subsidy programs, and it appears that more cutbacks are on the horizon. State funds are not there to supplement federal funds. Even if the internal improvements clause were not a barrier, the state’s fiscal problems would still be an issue in expanding state assistance for affordable housing. Even with federal funds, the incomes of some who need more affordable housing are so low that property tax exemption is essential to reaching the goal.

There is no question that not all local governments are eager to use property tax exemption as a tool to create affordable housing or improve the quality of existing

housing. Real estate taxes not paid by nonprofit corporations that own rental housing have to be paid by other taxpayers, who may not appreciate the importance of affordable housing to their community's health and economy. Local governments are also under fiscal pressure, and they need money to pay their bills and to invest in community growth. But Wisconsin law offers exemption from property taxes to accomplish a range of public purposes. And the foregone tax revenue from rental housing owned by nonprofit corporations has a relatively small impact on the total fiscal picture in any community.

The Wisconsin Partnership was heavily involved in the legislative debate over the most appropriate response to the Supreme Court's Columbus Park ruling. Our role was to keep the statewide network of nonprofit owners of rental housing informed about the debate, and to help them find opportunities to engage constructively in the debate. Because of that role, we continue to hear from nonprofit housing corporations about the aftermath of the Legislature's passage of SB 512. Unfortunately, the issue was not fully resolved by passage of the bill. In fact, we hear reports that local property assessors are more aggressively scrutinizing requests for exemption, and have questioned or denied exemptions to nonprofit-owned rental housing that have been granted in the past.

There are at least two issues in the Statutes that give rise to the problem:

First, there is no definition in the Statutes of "benevolent association." Local assessors are free to apply whatever definition they believe is appropriate. If a nonprofit owner of rental housing wishes to question the assessor's decision and is denied after using administrative appeals, their only option is to take action in court. That can be an expensive remedy.

We would urge the committee to consider proposing an amendment to the Statutes to provide a fair, consistent definition of owners of rental property who will be eligible for property tax exemption. The IRS Code provides a definition that is used by federal government to grant income tax exemptions to nonprofit corporations. The Legislature could consider making any entity that owns rental housing that is exempt from federal income taxes exempt from property taxes as well. The Legislature might also decide to modify the federal definition. But it is essential to provide an alternative to the undefined term "benevolent association."

Second, the Statutes currently require that the owner of rental housing is eligible for property tax exemption only if it "uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both." Reportedly, property tax exemption has been questioned or denied since the passage of SB 512 because the owner of the property uses income for other purposes.

I don't know the reason for the requirement which is now part of the Statutes.

I do know that rental income is typically used by any owner of rental property, for residents of any income level, to pay normal expenses other than maintenance and retirement of construction debt. Such expenses include utilities, management costs other than maintenance, legal and accounting expenses, and reserves for vacancies or increases in operating costs. Income is also used for retirement of debt other than construction debt, including permanent mortgages after construction is complete, debt used to purchase a property rather than to construct it, and debt used to refinance a property in order to get better terms or to finance capital improvements. Any owner of rental property who approached a lender, whether private or public, with an operating budget consisting only of maintenance expenses and construction debt service would not be seriously considered as a borrower.

The definition of allowable used of leasehold income in the Statutes is clearly inappropriate and needs to be changed. I hope the committee will make that recommendation.

As the excellent briefing paper prepared by Legislative Council staff notes, one of the central issues in the legislative debate was whether a “means test” should be applied to property tax exemption – whether exemptions should be granted only to housing for residents within certain income levels. The nonprofit organizations with which we work develop housing affordable to low and moderate income residents. However, some also develop mixed-income housing because they believe that’s preferable to exclusively low-income housing. And some nonprofit housing corporations develop and own housing for senior citizens who have higher health care costs than most younger people have, and who need supportive services to continue to live independently. If a means test is to be considered, we would urge that it be thought through carefully and sensitively and that it take into account all of the public policy purposes that rental housing impacts.

Thank you for your consideration of these issues. The Wisconsin Partnership stands ready to assist in your important work.



121 South Pinckney Street
Madison, Wisconsin 53703

Phone: 608-258-5560
Fax: 608-258-5565

The Wisconsin Partnership was created at the initiative of the Governor in 1985 as a statewide intermediary connecting nonprofit developers and the public sector with the private sector. We have carried out our mission by:

- Providing training and technical assistance to expand the capacity of local nonprofit developers so they would have more credibility with financing sources;
- Convincing public funding sources they could use their money more effectively in tandem with private lenders and investors, and that the nonprofit development sector could play a larger role in carrying out public sector objectives;
- Working with the private sector to create financing programs to meet business objectives as well as objectives of the local and state governments and the nonprofit developers;
- Developing housing;
- Advocating for more public and philanthropic resources devoted to affordable housing and neighborhood revitalization.

We have:

- Developed or acted as “full service” development consultant for 633 rental and 87 sale homes;
- Created and managed seven development financing programs that provided over \$65 million in debt and equity financing for more than 2,000 homes;
- Provided training and technical assistance to more than 50 nonprofit developers who have produced over 1,200 homes;
- Managed down payment assistance programs that have helped almost 2,200 lower-income households to buy their first home;
- Provided financial and technical assistance to a statewide network of home ownership counseling agencies who have worked with over 3,300 home buyers and potential buyers;

- Proposed and helped secure passage of legislation that has made over \$35 million in new state funds available for affordable housing.



The Wisconsin Partnership
for Housing Development, Inc.

121 South Pinckney Street, Suite 200
Madison, Wisconsin 53703
608 / 258-5560

Our mission is people who need decent housing they can afford.
Our vision is a good home for every one of them.
Our commitment is working hard to see that they find it.



The core of the Wisconsin Partnership's mission is the Wisconsin people who need decent, affordable housing and stronger communities. People who need housing are women, men and children we all know or see every day. They are people we work and shop and worship with, people who are our friends or neighbors or family members. They don't live in just one part of the state or one kind of place. They live everywhere in Wisconsin—in large cities, suburbs, small towns and rural areas. They live across town, around the corner, down the street and right next door.



Who needs decent, affordable housing?

We all do. But there are women, men and children who...

- ***Have nowhere to live at all, and are homeless.***
- ***Have so little money and pay so much for housing that they're living on the edge, one lost paycheck or major expense or serious illness away from being homeless.***
- Aren't employed because they don't have the skills for jobs that pay a living wage, because they can't afford childcare, or because they lost their jobs and haven't found new ones.
- Have jobs but still don't make enough to pay for decent housing.
- Find themselves alone and unable to afford decent housing because of a divorce or the death of a spouse.
- Are victims of domestic abuse, who have left intolerable situations but don't yet make enough money to support themselves.
- Are older and living on fixed incomes, and who may also need other kinds of help to live independently.
- Have physical disabilities and need housing designed for the way their bodies work.
- Have developmental disabilities or mental illnesses, and need both affordable housing and the right kinds of support services to live independently in the community.

Some of our neighbors who need housing are home owners who can't afford to maintain and repair their homes, are in danger of losing their homes because of rising taxes or utility cost, or need alternatives because their homes are too large for their needs. Some people who need housing are renters who would like to become home owners for the same reasons that anyone else wants to own a home, or who prefer to be renters but who want decent quality rental housing they can afford.

Some of our neighbors' choices about where and how they can live are constrained by discrimination – by the fact that some people don't like to live around certain other kinds of people. We usually think of that in terms of racial discrimination, and that is a huge problem by itself. But there is also discrimination because of people's disabilities, or the number of children they have, or how much money they have or even where they get their money.

Some of our neighbors have fewer housing choices because they have large families. Larger homes are hard to find at any cost, and are almost always too expen-

sive for families with more than a few children and lower incomes.

Some Wisconsin cities have neighborhoods where so many people with low incomes live without decent housing that the problem gets even bigger. People who can afford to live somewhere else leave because they've lost confidence that the neighborhood will ever be a good place to live again. Both home owners and owners of rental property may stop keeping their houses up, even if they can afford to, because they don't think it's a good investment. Lending institutions and investors are reluctant to put money into these neighborhoods because they believe the housing market doesn't provide good security for loans.

In older suburbs, neighborhoods may not be as "distressed" as some central-city neighborhoods are, but even there older homes are being left behind. Some of the people who leave grew up in those neighborhoods but can afford newer, more expensive housing in newer, more expensive suburbs. Some of them can't really afford to move, but feel they have no choice because there's no future in the old neighborhood. The people left behind have less money and are getting older just like the housing. They are less able or less willing to invest in maintaining their homes and rental properties because they too see an uncertain future.

And in some smaller communities and rural areas people also lose confidence. They believe that prospects for the local economy are poor, the people who can leave do, and again the people left behind don't have as much money to invest in housing.

In all these kinds of communities, the housing problem has become a problem of place as well as a problem for individual people. Solving the problem takes a concentrated, intensive investment of resources in those places to turn the situation around and restore people's confidence.

We know what we need.

If we have the will to do something about it, what should we do?

We should create opportunities for people to make good housing choices that meet their individual needs - whether that's home ownership or rental housing free of discrimination and prejudices about where "they" should live. "They" are us.

We should encourage and support rehabilitation of existing housing. The only housing choices available to people with less money shouldn't be homes with unsafe and unhealthy living conditions or homes that waste energy and are expensive to keep warm.

We should fix up older homes so they are good housing choices. We should stop throwing away good homes and neighborhoods that simply need new investment. We should stop replacing them with new homes we really can't afford and building roads we can't afford to get to them.

But we should build new homes where that's the best way to meet real housing needs - where we need more or a different kind of housing than already exists, or

to revitalize distressed neighborhoods and communities where the housing is beyond saving.

We should preserve the affordability and quality of the housing we have already built for people with lower incomes, so we don't fall behind at the same time we're trying to move ahead, and we should make sure it meets the needs of the people who live in it.

We should hold the government accountable for doing what only the government can do. We may need to create new federal housing programs, or change federal law so that some of the money in existing programs has to be used to help people whose housing needs aren't being met.

We may need to persuade housing agencies at the state level, that have significant discretion about how to use both federal programs and powers given to agencies at the state level, to use funds in a different way. Or we may need to change state law to require that state agencies use housing money in a different way. We may need to create new state-funded housing programs to help working poor people. And we may need new state legislation, or better enforcement of existing laws, to protect the rights of poor people to decent, affordable housing.

But we should also support and expand local and statewide partnerships between the public sector and the private sector, to increase private lending and investment in affordable housing and neighborhood revitalization.

We should support and expand the work of nonprofit housing corporations who have become the backbone of our affordable housing and neighborhood revitalization efforts, so that they can be full and effective partners with the public and private sectors.

The Wisconsin Partnership exists to help make those things happen. With the help of our friends, we'll be around as long as we're needed.